

REMARKS/ARGUMENTS

Favorable reconsideration of this application, as presently amended and in light of the following discussion, is respectfully requested.

Claim 18 is pending in the present application and is amended by the present amendment. Support for amended Claim 18 can be found at least at Figs. 4-5 and their corresponding descriptions in the originally filed disclosure. No new matter is presented.

In the Office Action, the IDS filed November 30, 2009 was indicated as not considered; and Claim 18 was rejected under 35 U.S.C. § 103(a) as unpatentable over Lee et al. (U.S. 2004/01922308, herein Lee).

The Office Action indicates that the IDS filed November 30, 2009, has not been considered because no English translation of the cited document (JP 2003-324762) or statement of relevance of this document was provided. In this regard, Applicants respectfully note MPEP § 609, which states:

Where the information listed is not in the English language, but was cited in a search report or other action by foreign patent office in a counterpart foreign application, the requirement for a concise explanation of relevance can be satisfied by submitting an English-language version of the search report or action which indicates the degree of relevance found by the foreign office. (emphasis added)

A corresponding English language translation of the Japanese Office Action, issued October 20, 2009 and citing JP 2003-324762, was filed along with the IDS of November 30, 2009. Therefore, Applicant has provided a statement of relevancy in accordance with MPEP § 609.

Accordingly, Applicant respectfully request that the reference cited in the IDS of November 30, 2009 be considered, and request indication of such in the next communication.

The Office Action rejects Claim 18 under 35 U.S.C. § 103(a) as unpatentable over Lee. In response to this rejection, Applicant respectfully submits that amended independent Claim 18 recites novel features clearly not taught or rendered obvious by Lee.

Independent Claim 18 is amended to recite, in part, a communication method having a variable modulation method comprising:

a requesting step of transmitting a signal, ***from a mobile station to a base station***, requesting data transmission of data stored in the mobile station to the base station when there is data to be transmitted from the mobile station to the base station;

a notifying step of transmitting a signal, ***from the base station to the mobile station***, notifying the data transmission when receiving the signal requesting data transmission ...

a retransmission notifying step of transmitting a signal representing whether the transmitted data is to be retransmitted or not,

wherein when the signal representing an instruction to retransmit the data is transmitted, the data is retransmitted from the mobile station to the base station with ***a same modulation method*** as one used for the data transmission.

In rejecting the claimed features directed to the “requesting step” and “transmitting step”, p. 3 of the Office Action relies on steps 204 and 206, respectively, as shown in Fig. 2 of Lee. These cited portions of Lee, however, describe transmitting signals in an inverse direction to those recited in amended independent Claim 18.

More specifically, as described in paragraph [0010], step 204 of Fig. 10 of Lee corresponds to a step in which a Node B (e.g., base station) 110 assigns a modulation scheme and a number of codes to user equipment (UE) 112. Thus, step 204 in Lee is a step in which assignment information is transmitted from a base station to a mobile station. This is in clear contrast to the “requesting step” in Claim 18, which recites transmitting a signal “***from a mobile station to a base station***” requesting transmission of data ***from*** the mobile station ***to*** the base station.

Further, as described in paragraph [0010], step 206 of Fig. 10 of Lee corresponds to a step in which the UE 112 transmits control information and a data rate to the Node B 110. Thus, step 206 in Lee is a step in which control information is transmitted from the mobile station to the base station. In contrast, “notifying step” recited in Claim 18 includes

transmitting a signal “*from the base station to the mobile station*” notifying the data transmission when receiving the signal requesting data transmission.

Therefore, these cited passages of Lee fail to teach or suggest a communication method that includes “a requesting step of transmitting a signal, *from a mobile station to a base station*, requesting data transmission of data stored in the mobile station to the base station ...” and “a notifying step of transmitting a signal, *from the base station to the mobile station*, notifying the data transmission when receiving the signal requesting data transmission,” as recited in amended independent Claim 18.

Independent Claim 18 further recites that “when the signal representing an instruction to retransmit the data is transmitted, the data is retransmitted from the mobile station to the base station with *a same modulation method as one used for the data transmission.*”

In addressing the above noted feature, p. 5 of the Office Action relies on paragraph [0049] of Lee, asserting that this cited passage of the reference “discloses an uplink retransmission system, in which a transmitter performs an initial transmission and a retransmission using the same format, mainly, using the same coding rate (i.e. a modulation method) applied for the initial transmission and the retransmission.” (emphasis added)

Thus, paragraph [0049] of Lee does appear to describe retransmitting data at the same transmission rate of an original transmission, but does not teach or suggest that the *same modulation method* is used for the data retransmission, as recited in independent Claim 18. More concretely, data rate and modulation method are not analogous parameters, as data rate corresponds to the rate at which the data is transmitted, whereas modulation method corresponds to the modulation method used to modulate the transmitted data.

Lee, therefore, also fails to teach or suggest that “when the signal representing an instruction to retransmit the data is transmitted, the data is retransmitted from the mobile

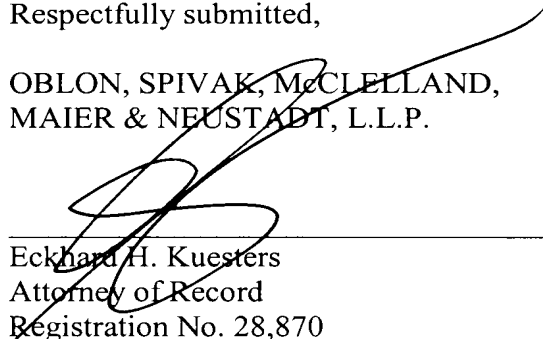
station to the base station with *a same modulation method as one used for the data transmission,*” as recited in independent Claim 18.

Accordingly, Applicant respectfully requests that the rejection of Claim 18 under 35 U.S.C. § 103 be withdrawn.

Consequently, in view of the present amendment and in light of the foregoing comments, it is respectfully submitted that the invention defined by Claim 18 is patentably distinguishing over the applied references. The present application is therefore believed to be in condition for allowance and an early and favorable reconsideration of the application is therefore requested.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,  
MAIER & NEUSTADT, L.L.P.



---

Eckhard H. Kuesters  
Attorney of Record  
Registration No. 28,870

Customer Number

**22850**

Tel: (703) 413-3000  
Fax: (703) 413-2220  
(OSMMN 03/06)

Andrew T. Harry  
Registration No. 56,959